



DATE: May 23, 2003

STATE MINING & GEOLOGY BOARD POLICY & LEGISLATION COMMITTEE

Item 2 -- Recommendation to the Board to Notify the Following SMARA Lead Agencies of Assumption of Their SMARA Authority Pursuant to PRC §2774.5 on July 10, 2003 if Revised Surface Mining Ordinances are Not Received by July 1, 2003

BACKGROUND: On July 1, 1997, the SMGB, acting on a recommendation from the Policy Committee, instructed the Executive Officer to notify those SMARA (Surface Mining and Reclamation Act of 1975, Public Resources Code §2710 et seq.) lead agencies with surface mining and reclamation ordinances certified prior to 1991 that their ordinances may no longer be in accordance with current SMARA. The SMGB indicated that commencing in January 1998, it would begin a formal review of lead agency ordinances, pursuant to its authority under PRC §2774.3 and §2774.5, that may not be in accordance with statute.

During 1998, the SMGB reviewed 90 lead agency ordinances certified prior to 1991, and determined that 68 of them were deficient. These lead agencies with deficient ordinances were notified of the need to update their ordinances according to a time table established in statute.

By January, 1999, the SMGB had assumed limited SMARA authority for 25 lead agencies that defaulted on revising their ordinances within statutory time limits. The SMGB, also, assumed full SMARA authority for 11 additional jurisdictions that had no surface mining ordinances. By late 1999, the SMGB had assumed full or partial SMARA authority for 48 lead agencies (cities and counties).

Today, the SMGB retains full SMARA lead agency authority for two counties through enforcement actions; and five cities that do not have mining ordinances. The SMGB has assumed "partial" SMARA authority for one county and 13 cities that have not yet provided updated mining ordinances as requested.

DISCUSSION: SMARA provides that cities and counties (lead agencies) that have surface mining operations within their jurisdictions shall adopt ordinances in accordance with state policy that establish procedures for the review and approval of reclamation plans, financial assurances, and the issuance of permits to conduct surfacing mining operations (PRC §2728, §2774). The SMGB is provided authority to certify those local ordinances as being in accordance with state policy under PRC §2774.3. If the SMGB reviews a lead agency mining ordinance and finds the ordinance deficient, and the lead

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agency does not revise the ordinance within a statutory time period, the SMGB must assume full authority for the review and approval of reclamation plans until the lead agency's mining ordinance is revised and certified by the SMGB (PRC §2774.5). Also, SMARA provides that in any jurisdiction in which the lead agency does not have a certified ordinance, the SMGB must approve the reclamation plan prior to the conduct of any surface mining operation within that jurisdiction. Any reclamation plan, approved by a lead agency under the lead agency's ordinance that was not in accordance with state policy at the time of approval, is subject to amendment by the SMGB.

SMARA defines the lead agency as the city, county, San Francisco Bay Conservation and Development Commission, or the SMGB that has the principal responsibility for approving a surface mining operation or reclamation plan pursuant to SMARA.

As of this date, there are 13 cities and one county in which the SMGB has assumed only partial SMARA authority because these jurisdictions have deficient, rather than no, surface mining ordinances. However, it is apparent that, in spite of several SMGB attempts since 1998 to encourage these jurisdictions to revise and have recertified their mining ordinances, these 14 jurisdictions appear not to wish to do so.

The jurisdictions that have mining ordinances declared deficient by the SMGB and over which the SMGB has assumed partial SMARA authority, and that would be subject to assumption of their full SMARA authority, are:

Cities: Auburn (12/30/98); Compton (12/31/98); Folsom (12/30/98); Jackson (12/30/98); Oakland (9/9/98); Pacifica (5/26/99); Poway (12/30/98); Richmond (8/23/98); Rocklin (12/30/98); Rolling Hills (8/24/98); San Jacinto(12/30/98); Sutter Creek (12/30/98); and, Vista (5/22/99).

County: Colusa (10/30/98).

EXECUTIVE OFFICER'S RECOMMENDATION: The Executive Officer recommends that the Committee instruct the Executive Officer to notify the subject lead agencies that unless they submit revised surface mining ordinances to the SMGB before July 1, 2003, that the SMGB will assume their full SMARA authority at its regularly scheduled meeting on July 10, 2003; and, that the Committee recommend to the SMGB that it assume the full SMARA authority for these lead agencies at its July 10, 2003 meeting.

SUGGESTED MOTION LANGUAGE:

Mr. Chairman, in light of the evidence before the Committee, I move that the Committee recommend to the SMGB that it assume at its July 10, 2003 regular business meeting full

SMARA authority for the lead agencies described in this Staff Report for their failure to provide a revised surface mining ordinance for certification as required by SMARA, and that the Committee instruct the Executive Officer to notify the affected lead agencies to submit their revised ordinances to the SMGB not later than July 1, 2003 or be subject to loss of their SMARA authority.